IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3214 of 2007
With
FIRST APPEAL Nos.2482 to 2491 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
SITABEN D/O. MANIBEN CHANDRASINH - Defendant(s)

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Appearance :
Mr. P.M.Acharya, learned Assistant Government Pleader for appellants in First Appeal No.3214 of 2007 and First Appeal Nos.2482 to 2488 of 2007.

Mr.S.S.Shah, learned Government Pleader for appellants in First Appeal Nos.2489 to 2491 of 2007
MR JOY MATHEW for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/07/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. All these appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated August 20,2004, rendered by the learned Joint District Judge, (FTC No.4), Bharuch in Land Acquisition Reference Nos. 1057 to 1067 of 2002, by which the claimants have been awarded additional amount of compensation at the rate of Rs.15.20 Ps per sq.mt. for their acquired lands, in addition to compensation offered to them at the rate of Rs.3/- per sq.mt. by the Special Land Acquisition Officer vide his award dated March 18,1991.

2. The Executive Engineer, Karjan Medium Irrigation Scheme, Ankleshwar proposed to the State Government to acquire the lands of village Valia, Taluka and

District Bharuch for the public purpose of Karjan Project. On perusal of the same, the State Government was satisfied that the lands mentioned therein were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on July 26,1990. The said notification was followed by a declaration made under Section 6 of the Act, which was published in the Official Gazette on November 22, 1990. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.3/-per per sq.mt. by his award dated March 18,1991. Feeling dissatisfied, the claimants submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court,Bharuch,

where they were numbered as noticed earlier.

3. On behalf of the claimants, witness Joravarsinh Naharsinh Piludariya was examined at Exh.10. After giving particulars of the lands acquired, the witness mentioned that village Valia was the main Taluka Center, where all basic amenities such as Market Yard, Agricultural Produces Market Committee, Ginning and Processing Society, Telephone Exchange, Scheduled Bank, Co-operative Bank, Dispensary, Petrofills Company, G.I.D.C. etc. were situated. The witness further informed the court that his village Valia was situated on the State Highway and was at a short distance from the lands which were earlier acquired for G.I.D.C. purpose. After stating that each claimant was able to raise crops of cotton, sugarcane, etc. the witness asserted that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per Vigha per year from the sale of agricultural produces. The witness further maintained that village Nana Sorva was situated quite near his village from which also lands similar to the lands acquired in the instant cases were acquired and as the Reference Court had awarded compensation at the rate of Rs.15.18 ps. per sq.mt. to the claimants,

whose lands were acquired from village Nana Sorva, the claimants in the instant case also should be awarded compensation on the basis of the said previous award. The witness produced previous award of the Reference Court relating to the lands of village Nana Sorva at Exh.9.

Though this witness was cross-examined by the learned counsel for the acquiring authorities, nothing substantial could be elicited nor the assertion made by the witness that lands of village Nana Sorva were similar to the lands acquired in the instant cases and furnished good guidance for determining the market value of the lands acquired in the instant cases,could be demonstrated to be untrue.

4. It is relevant to notice that no evidence was adduced on behalf of the acquiring authorities.

5. On appreciation of evidence adduced by the claimants, the Reference Court was of the opinion that previous award of the Reference Court relating to the lands of village Nana Sorva furnished good guidance for the purpose of determining market value

of the lands acquired in the instant cases. Placing reliance on the said previous award, Reference Court has awarded in all compensation to the claimants at the rate of Rs.18.20 Ps.per sq.mt. by the impugned award, giving rise to the above numbered appeals.

6. This Court has heard Mr.Pathik Acharya, learned Assistant Government Pleader and Mr.Joy Mathew, learned counsel for the claimant/claimants in each appeal at length and in great detail. This court has also considered the paper book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. It is true that the claimants could not make good their assertion that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per Vigha per annum from the sale of agricultural produces. However, the said fact pales into insignificance inasmuch as enhanced compensation was never claimed on yield basis. The record does not indicate that enhanced compensation was also claimed on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced

compensation was previous award of the Reference Court relating to the lands of village Nana Sorva, which was produced at Exh.9. A bare perusal of Exh.9 makes it evident that pursuant to publication of Notification in the Official Gazette on December 9,1988, lands of village Nana Sorva were acquired for the public purpose of Karjan Project. Therein the Special Land Acquisition Officer by his award dated December 31,1990, had offered compensation to the claimants at the rate of Rs.1.25 Ps. per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly references were made to the District Court, Bharuch where they were numbered as Land Reference Case Nos.788 to 797 of 1992. In those cases, on behalf of the claimants (1)Bhupatsinh Hamirsinh Keshrola Exh.14, (2) Kishorbhai Shantilal and (3) Shantilal Chhotalal Padariya were examined. On the basis of evidence adduced by the parties, the Reference Court by common judgment and award dated December 14,2001 in all awarded compensation to the claimants of those cases at the rate of Rs.15.18 Ps. per sq.mt. It is well settled principle of law that previous award of the Reference Court relating to a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of

determining the market value of similar lands acquired subsequently from the adjoining village. The relevancy of the previous award of the Reference Court relating to lands of village Nana Sorva stands satisfactorily established by reliable testimony of the witness examined on behalf of the claimants. The assertion made by the said witnesses that the village Nana Sorva was situated near the lands acquired and that the lands of the said village were similar in all respects to the lands acquired in the instant cases, could not be demonstrated to be untrue. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon previous award of the Reference Court relating to the lands of village Nana Sorva for the purpose of determining market value of the lands acquired in the instant cases. Further notification under Section 4(1) of the Act was published in the Official Gazette on December 9,1988 for the purpose of acquiring lands from village Nana Sorva, whereas in the instant cases the same were published in the Official Gazette on July 26,1990 and,therefore, in view of gap of time between the issuance of two notifications, the Reference Court was justified in granting benefit of rise in price of

lands to the claimants at the rate of 10% per annum. The calculation of compensation found payable by the Reference Court on the basis of previous award of the Reference Court relating to the lands of village Nana Sorva is not in dispute before this court in the instant appeals. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. The learned Assistant Government Pleader for the appellants could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced before it. Thus, the appeals, which lack merits, deserve dismissal.

8. For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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